

January 3, 2008

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Supplemental Order

Name of Petitioner: Crude Oil Supplemental Refund Distribution

Date of Filing: December 31, 2007

Case Numbers: RB272-10159
RC272-00440

Pursuant to the long-standing policy of the Department of Energy (DOE), thousands of purchasers of petroleum products have applied for, and been granted, refunds from crude oil overcharge funds under the jurisdiction of the DOE's Office of Hearings and Appeals (OHA). See Modified Statement of Restitutionary Policy In Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986). The standards for considering Applications for Refund from these crude oil funds are set forth at 10 C.F.R. Part 205, Subpart V. The deadline for applications in the crude oil proceeding was June 30, 1995.

The OHA has approved more than 87,000 crude oil overcharge refund applications. A claimant is generally eligible for a refund equal to the number of gallons of eligible refined petroleum products it purchased during the period August 19, 1973 through January 27, 1981, multiplied by a per gallon refund amount. That per gallon refund amount, also referred to as the volumetric, is derived by dividing the total refund monies available by the total U.S. consumption of petroleum products during the crude oil price control period. Originally, the DOE calculated refunds at a \$0.0002 per gallon volumetric. In 1989, the DOE increased the volumetric to \$0.0008 per gallon, and applicants paid at the lower \$0.0002 per gallon rate were eligible for a \$0.0006 per gallon supplemental payment. See Crude Oil Supplemental Refund Distribution, 18 DOE ¶ 85,878 (1989). In 1995, the DOE increased the volumetric to \$0.0016 per gallon, and applicants paid at the lower \$0.0008 per gallon rate were eligible for a \$0.0008 per gallon supplemental payment.

On January 13, 2006, the DOE announced that applicants paid at the lower \$0.0016 per gallon rate were eligible for an additional \$0.000695389 per gallon supplemental refund. 71 Fed. Reg. 2195 (January 13, 2006). Refunds are rounded to the nearest dollar.

In order to receive a supplemental refund check, applicants are required to verify that their name and address in our records are correct, to correct any information that is not

accurate, and to verify whether the refund cannot be paid to the original applicant for any reason, e.g., due to death, divorce, bankruptcy or dissolution of a business.

This decision concerns the supplemental refunds for Case Nos. RF272-62079, RF272-64517, and RK272-01685, under which refunds previously had been paid to Owatonna Canning Co. (RF272-62079) and Stokely U.S.A., Inc. (RF272-64517 and RK272-01685). In 2006, the DOE disbursed supplemental refunds in these cases to Chiquita Brands LLC, on behalf of Chiquita Processed Foods LLC, successor in interest to Owatonna Canning Co. and Stokely U.S.A., Inc. Subsequently, it came to our attention that, in 2003, Chiquita Brands International, Inc., sold all of the equity interests in its subsidiary Chiquita Processed Foods LLC to Seneca Foods Corporation. *See* Letter from Barbara M Howland, Assistant Secretary, Chiquita Brands International, to Steve Goering, Office of Hearings and Appeals (March 27, 2007).

With regard to an applicant's eligibility for a refund where changes of ownership are concerned, the OHA presumes that the owner during the price control period should receive the refund. This presumption may be rebutted if the present owner can show that either (a) the owner during the price control period was a corporation whose corporate stock was purchased by the current owner or (b) the business was transferred under a contract that specified potential refunds, either expressly or implicitly, as one of the assets being transferred. *Murphy/Aldrich and Love Service Station*, 23 DOE ¶ 85,025 at 88,059 (1993).

Because Seneca Foods Corporation acquired the corporate stock of Chiquita Processed Foods LLC, Seneca Foods Corporation is now entitled to the refunds that otherwise would have been paid to Owatonna Canning Co. and Stokely U.S.A., Inc. Thus, we will rescind our prior order granting these supplemental refunds under Case No. RB272-10026, and order the disbursement or refunds in these cases to Seneca Foods Corporation.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take appropriate action to disburse supplemental refunds in the amounts of \$2,307.00 (RF272-62079), \$1,087.00 (RF272-64517), and \$719.00 (RK272-01685) to:

Seneca Foods Corporation
c/o Jeff Van Riper, Controller
3736 South Main Street
Marion, NY 14505

(2) The funds shall be disbursed from the escrow fund denominated Crude Tracking-Claimants 4, Account No. 999DOE010Z, maintained at the Department of the Treasury.

(3) The Decision and Order issued in Case No. RB272-10026 be and hereby is rescinded to the extent set forth in Paragraph (4) below.

(4) Chiquita Brands LLC shall remit the sum of \$4,113.00 to the Department of Energy within 30 days of this Decision and Order. The check shall be made payable to the "U.S. Department of Energy," shall prominently display Case No. RC272-00440, and shall be sent to:

US Department of Energy
Cash Deposits
P. O. Box 979019
St. Louis, MO 63197-9000

In the event that payment is not made within 30 days of the date of this Decision and Order, interest shall accrue on the amount due at the rate generally assessed by the Department of Energy on overdue receivables. Other charges generally assessed on overdue DOE receivables shall also apply.

(5) Upon notification by the Office of the Controller of the receipt of these funds, the Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy, shall deposit these funds into the deposit fund escrow account maintained at the Department of Treasury denominated Crude Tracking - Claimants IV, Account No. 999DOE010Z.

(6) Applicants shall notify the Office of Hearings and Appeals in the event that there is a change of address, or if an address correction is necessary. Such notification shall be sent to:

Director of Management Information
Office of Hearings and Appeals
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0107

(7) Any conditions imposed that applied to an applicant's receipt of the initial crude oil refund shall also apply to that applicant's receipt of this supplemental refund.

(8) The determinations made in this Decision and Order are based upon the presumed validity of the statements and documentary material submitted by the applicants. This Decision and Order may be revoked or modified at any time upon a determination that the basis underlying a refund application is incorrect.

(9) This is a final Order of the Department of Energy.

Poli A. Marmolejos
Acting Director
Office of Hearings and Appeals

Date: January 3, 2008